

SOUTH AFRICA 2021 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

South Africa is a multiparty parliamentary democracy in which constitutional power is shared among the executive, judiciary, and parliamentary branches. In 2019 the country held a credible national election in which the ruling African National Congress won 58 percent of the vote and 230 of 400 seats in the National Assembly. In 2019 African National Congress president Cyril Ramaphosa was sworn in for his first full term as president of the republic.

The South African Police Service has primary responsibility for internal security. The police commissioner has operational authority over police. The president appoints the police commissioner, but the minister of police supervises the commissioner. The South African National Defense Force, under the civilian-led Department of Defense, also has domestic security responsibilities.

In July the country witnessed violent riots and unprecedented looting, primarily in KwaZulu-Natal and Gauteng, following the arrest of former president Jacob Zuma for contempt of the Constitutional Court. In the aftermath, then acting minister in the presidency, Khumbudzo Ntshavheni, announced the death toll related to the unrest was 337, but no deaths were attributed to authorities. The South African Human Rights Commission conducted public hearings in November and December to determine the causes of the unrest and identify failures by the government to anticipate violence and mitigate death and destruction.

Significant human rights issues included credible reports of: unlawful or arbitrary killings by the government; torture or cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious government corruption; trafficking in persons; crimes involving violence or threats of violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons; and the existence of the worst forms of child labor.

Although the government investigated, prosecuted, and punished some officials

who committed human rights abuses or were accused of corruption, there were numerous reports of impunity.

Section 1. Respect for the Integrity of the Person

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were several reports that the government or its agents committed arbitrary or unlawful killings. In July more than 300 persons died during riots in the provinces of Gauteng and KwaZulu-Natal. Most of the victims died due to a stampede, but there were allegations of police brutality and intelligence failures. Authorities arrested no officials. The Independent Police Investigative Directorate investigates allegations of police brutality.

Police use of lethal and excessive force, including torture, resulted in numerous deaths and injuries, according to the Independent Police Investigative Directorate (IPID), Amnesty International, and other nongovernmental organizations (NGOs). According to Human Rights Watch, on March 10, security forces fired rubber bullets at close range into a crowd of reportedly peaceful student protesters in Johannesburg, killing Mthokozisi Ntumba, who was apparently a bystander. Authorities announced they had opened an investigation. Authorities arrested four security force members, and as of December they were out on bail. The suspects were expected back in court for pretrial hearings at a date yet to be confirmed.

Watchdog groups noted deaths in custody often resulted from physical abuse combined with a lack of subsequent medical treatment or neglect (see section 1.c.). According to the *Independent Police Investigative Directorate Report 2020/2021*, deaths in police custody (217 cases) decreased by 8 percent from 2019/2020. The Judicial Inspectorate for Correctional Services (JICS) 2020-21 annual report stated, “A particularly disturbing feature was a sharp rise in cases where the use of force caused the deaths of inmates.”

NGOs criticized the use of excessive force by the South African Police Service (SAPS) and the South African National Defense Force (SANDF) to enforce lockdown measures that began in March 2020. Following 2020 rioting and clashes

with police, three officers were arrested and charged with murder. All three officers were released on bail, and their trials began in October. The trial continued as of year's end.

Courts convicted few perpetrators of political violence. In September, three women were shot and killed while participating in a community meeting to nominate a ward councilor candidate for a township of Durban. Media and NGOs claimed most killings resulted from local-level intraparty African National Congress (ANC) disputes, often in the context of competition for resources or as revenge against whistleblowers who uncovered corruption. In 2018 the Moerane Commission, which then KwaZulu-Natal Province premier Willies Mchunu established to investigate political killings, published a report that identified ANC infighting, readily available hitmen, weak leadership, and ineffective and complicit law enforcement agencies as key contributing factors to the high rate of political killings. There were numerous reported political killings at a local level such as the following example: in May, Mzwandile Shandu, an ANC ward councilor in Mkhambathini Mid Illovo in KwaZulu-Natal survived a suspected attempted killing.

In August, Babita Deokaran was killed by gunfire. A whistleblower, she worked as chief director of financial accounting and also acted as the chief financial officer in the Gauteng Department of Health, where she discovered and exposed personal protective equipment tender corruption in the Gauteng premier's office. At year's end six suspects were in custody pending their next bail hearing. The case launched a debate concerning inadequate protections for whistleblowers. In November a whistleblower who testified in the State Capture Commission (aka Zondo Commission) issued a highly publicized statement on his reasons for leaving the country to seek safety from threats of retribution.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or

Punishment

Although the constitution and law prohibit such practices, there were reports of police and SANDF use of torture and physical abuse during house searches, arrests, interrogations, and detentions, some of which resulted in death. The NGO Sonke Gender Justice reported in 2020 that almost one-third of sex workers interviewed stated police officers had raped or sexually assaulted them. The 2020/21 IPID report cited 80 reported inmate rapes by police officers, 256 reports of torture, as well as reports of assault.

In April police reportedly assaulted and arrested several individuals for contravening COVID-19 lockdown regulations in Lenasia, south of Johannesburg. According to the IPID, all the arrested persons were “detained with injuries.” Later, during a cell visit, police found that one of the detainees had died.

Impunity was a significant problem in the security forces. In June the national police commissioner admitted that SAPS needed to improve its “discipline management” for police officers accused of violence. The lack of police accountability for thousands of annually registered police-brutality complaints was documented by the police watchdog organization IPID. The factors contributing to widespread police brutality were a lack of accountability and training.

As of October 30, the United Nations reported one allegation of attempted sexual exploitation of an adult against the country’s personnel deployed to peacekeeping operations. During the year there were two allegations (for incidents occurring during the year and in 2013) against the country’s peacekeepers, down from three total allegations in 2020. According to the *Conduct in UN Field Missions* online portal, since 2015 there have been 39 allegations of sexual exploitation and abuse against 45 peacekeepers: six of the victims were children, 33 were adults. Of the 39 allegations, the government took accountability measures for 22 substantiated allegations. According to the United Nations, the country’s authorities continued to investigate the other seven open cases. In June the country’s permanent representative to the United Nations issued a statement concerning its efforts to facilitate paternity and maintenance support claims of victims of peacekeepers’ sexual abuse and exploitation.

Prison and Detention Center Conditions

Prison conditions were harsh due to overcrowding, poor sanitation, inadequate medical care, disease (particularly tuberculosis), inmate-on-inmate rape, and physical abuse, including torture.

Physical Conditions: According to civil society groups, gross overcrowding of prisons was a problem. According to the *2020/2021 Department of Correctional Services Annual Report*, in March the country held 140,948 prisoners in facilities with a capacity of 110,836 persons.

SAPS made more than 3,400 arrests in connection with the civil unrest and riots in July. Almost 1,700 suspects were admitted as remand (pretrial) detainees, many of whom were granted bail but could not afford it, and already overcrowded correctional facilities were struggling to accommodate those awaiting trial.

Prisons generally held pretrial detainees with convicted prisoners, although in some large urban areas dedicated pretrial facilities were available.

There were reports of shortages of prison doctors, inadequate investigation and documentation of prisoner deaths, inadequate monitoring of the prison population, and high prisoner suicide rates. The Department of Correctional Services (DCS) required doctors to complete and sign reports of inmate deaths due to natural causes to lessen the incidence of deaths caused by neglect.

The JICS received 694 complaints relating to use of force by correctional officials on inmates between April 2020 and March, an almost 94 percent increase compared with the previous year.

Food, sanitation, and health care in prisons and detention centers were inadequate. Prisons provided inmates with potable water, but supplies and food were occasionally inadequate, and sanitation was poor. Most cells had toilets and basins but often lacked chairs, adequate light, and ventilation.

NGOs reported some inmates with mental disabilities who had committed no crime or other infraction were incarcerated rather than being cared for in a mental-health facility. Such prisoners also were often denied medical services. The JICS 2020-

21 annual report also indicated patients were confined at correctional facilities because there was insufficient accommodation at mental health facilities, and that the DCS lacked sufficient mental health professionals to provide care to suicidal inmates. During the year 66 attempted suicides were reported.

Administration: Authorities did not always conduct proper investigations of credible allegations of mistreatment.

Independent Monitoring: The government usually permitted monitoring by independent nongovernmental observers of prison conditions, including visits by the International Committee of the Red Cross and the independent JICS, which was led by retired constitutional court justice Edwin Cameron.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention and provide for the right of any person to challenge the lawfulness of arrest or detention in court. The government generally observed these requirements; however, there were numerous cases of arbitrary arrest of foreign workers, asylum seekers, and refugees.

Arrest Procedures and Treatment of Detainees

The law requires that a judge or magistrate issue arrest warrants based on sufficient evidence. Police must promptly inform detainees of the reasons for their detention, their right to remain silent, and the consequences of waiving that right. Police must charge detainees within 48 hours of arrest; hold them in conditions respecting human dignity; allow them to consult with legal counsel of their choice at every stage of their detention (or provide them with state-funded legal counsel); and permit them to communicate with relatives, medical practitioners, and religious counselors. The government often did not respect these rights. Police must release detainees (with or without bail) unless the interests of justice require otherwise, although bail for pretrial detainees often exceeded what suspects could pay.

Arbitrary Arrest: During the year there were numerous cases of arbitrary arrest, particularly of foreign workers, asylum seekers, and refugees. NGOs and media outlets reported security forces arbitrarily arrested migrants and asylum seekers, including those with proper documentation, often because police were unfamiliar

with migrant and asylum documentation. In some cases police threatened documented migrants and asylum seekers with indefinite detention and bureaucratic hurdles unless they paid bribes. The law prohibits the detention of unaccompanied migrant children for immigration law violations, but NGOs reported the Department of Home Affairs (DHA) and SAPS nevertheless detained them.

Legal aid organizations reported police frequently arrested persons for minor crimes for which the law stipulates the use of a legal summons. Arrests for offenses such as common assault, failure to provide proof of identity, or petty theft sometimes resulted in the unlawful imprisonment of ordinary citizens alongside hardened criminals, which created opportunities for physical abuse. In 2019 SAPS removed refugee and asylum seeker protesters from the Office of the UN High Commissioner for Refugees' (UNHCR's) Cape Town office and from the UNHCR Pretoria office, taking them to city-provided camps in Bellville and Wingfield. Approximately 180 male protesters were arrested, charged, and convicted of trespassing on the UNHCR compound, most of whom received suspended sentences and were released. Two of the protest leaders were deported in April, while the deportation case of protest leader Jean Pierre Balous remained pending as of December.

Pretrial Detention: Lengthy pretrial detention was common. According to the *Department of Correctional Services 2020/21 Annual Report*, the pretrial population averaged 47,882 of 140,948 detainees, 34 percent of the total inmate population. According to the DCS, detainees waited an average of 176 days before trial. Observers attributed the high rate of pretrial detention to arrests based on insufficient evidence for prosecution, overburdened courts, poor case preparation, irregular access to public defenders, and prohibitive bail amounts. Police often held detainees while prosecutors developed cases and waited for court dates. Legal scholars estimated less than 60 percent of those arrested were convicted. The law requires a review in cases of pretrial detention of more than two years' duration. The pretrial detention frequently exceeded the maximum sentence for the alleged crime.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence and impartiality. There were numerous reports of lost trial documents, often when the accused was a government official. NGOs stated judicial corruption was a problem.

Government agencies sometimes ignored orders from provincial high courts and the Constitutional Court.

Trial Procedures

The law provides for the right to a fair and public trial, and an independent judiciary generally enforced this right. Criminal defendants enjoy the right to a presumption of innocence; to be informed promptly of the charges; to a fair, timely, and public trial; to be present at their trial; to communicate with an attorney of their choice or have one provided at public expense if unable to pay; to have adequate time and facilities to prepare a defense; to free assistance of an interpreter; to confront prosecution or plaintiff witnesses and present their own witnesses and evidence; and not to be compelled to testify or confess guilt. Police did not always inform detainees promptly and in detail of the charges against them, nor did they always accurately complete corresponding paperwork. Provision of free interpreter assistance depended on availability and cost. Limited access to interpreters sometimes delayed trials. According to civil society groups, interpretation standards were low and sometimes compromised the accuracy of exchanges between a defendant and officers of the court. Judges sometimes transferred cases from rural to urban areas to access interpreters more easily.

Although detainees and defendants have the right to legal counsel provided and funded by the state when “substantial injustice would otherwise result,” this right was limited due to a general lack of information regarding rights to legal representation and inadequate government funding of such legal services. There is no automatic right to appeal unless a convicted individual is younger than 16, but courts may give defendants permission to do so. Additionally, the law provides for the High Court to review magistrate court sentences exceeding six months.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

Individuals and organizations may seek civil remedies for human rights abuses through domestic courts, including equality courts designated to hear matters relating to unfair discrimination, hate speech and harassment, and the South African Human Rights Commission, but the government did not always comply with court decisions. Individuals and organizations may not appeal domestic court decisions to the African Court on Human and Peoples' Rights, because the government does not recognize the competence of the court.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

The constitution and law prohibit such actions. The NGO Freedom House reported that government agencies employed spyware, social media analytics, and surveilled journalists, usually to identify their confidential sources. Most of these activities required court orders, but it was reportedly easy for agencies to obtain court orders. On February 4, the Constitutional Court ruled the law does not allow authorities to engage in bulk interception of communications in a case brought by the amaBhungane Centre for Investigative Journalism. Civil society organizations raised concerns government management of the COVID-19 pandemic employed telephonic contact tracing that violated privacy rights. In April 2020 the government issued amended disaster management regulations. While the regulations recognized the right to privacy, the government urged citizens to make concessions until pandemic emergency measures were no longer necessary.

Section 2. Respect for Civil Liberties

a. Freedom of Expression, Including for Members of the Press and Other Media

The constitution and law provide for freedom of expression, including for members of the press and other media, and the government generally respected this

right. An independent press, a generally effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for members of the press. Nevertheless, the law permits authorities to restrict reporting on security forces, prisons, and mental institutions.

Freedom of Expression: The decade-old case of journalist John Qwelane convicted of antigay hate speech for a 2008 editorial, “Call me names, but gay is not okay,” was finally settled in July when the Constitutional Court ruled that Qwelane’s article was tantamount to hate speech. This came after the Constitutional Court reviewed the lower courts’ decisions on the case and examined the constitutionality of the law defining hate speech.

Freedom of Expression for Members of the Press and Other Media, Including Online Media: Independent media were active and expressed a wide variety of views. The country’s media maintained self-regulation. The South African News Editors Forum (SANEF) encouraged accurate reporting and held outlets to account when they violated ethics norms. Media Monitoring Africa (MMA) and SANEF highlighted the impact of financial pressure on newsrooms and the resulting high workload for staffs that continue to shrink. As a result, journalists and newsrooms were more susceptible to bribes, according to Kate Skinner, an independent media researcher. MMA Director William Bird also noted that smaller newsrooms spent less time fact checking stories with multiple sources, which might also impede press freedom.

Violence and Harassment: There were instances of journalists, in particular female journalists, who were subjected to violence, harassment, or intimidation by authorities or political party representatives due to their reporting.

In March, Johannesburg police shot at a News24 reporter when he started to report on police firing rubber bullets to disperse a group of individuals violating lockdown regulations. SANEF reportedly filed a formal complaint regarding the incident.

Members of the Economic Freedom Fighters (EFF) party threatened the late journalist and broadcaster Karima Brown with rape and flaying after the party’s leader Julius Malema published her mobile number on Twitter. Similar threats

targeted *Daily Maverick* investigative reporter Pauli Van Wyk following her report on a scandal that linked the EFF to VBS Mutual Bank. EFF supporters also reportedly attacked journalists for the private broadcaster eNCA. In March they attacked journalist Sli Masikane as she covered a protest on student debt in Durban. On June 10, demonstrators in Cape Town threatened reporter Ayesha Ismail and cameraman Mario Pedro as they attempted to cover an antiracism protest.

The trial of EFF deputy president Floyd Shivambu, who was accused of assaulting a Network24 photographer in 2018 on the parliamentary precinct, was postponed to February 2022.

During civil unrest in July in KwaZulu-Natal and Gauteng, four radio stations, Alex FM, Mams Radio, West Side FM, and Intokozo FM, were vandalized by rioters. Other journalists covering the unrest reported assaults and theft of equipment, according to the Committee to Protect Journalists.

In October, SANEF issued a statement condemning criminal attacks and robberies on journalists, especially those attempting to provide election coverage in the lead-up to the November 1 municipal elections. SANEF's statement declared, "South Africa is becoming a very dangerous place for journalists and apart from attacks on the field, journalists also face cyberbullying and severe attacks on social media platforms."

Censorship or Content Restrictions: Government and political officials often criticized media for lack of professionalism and reacted sharply to media criticism. Some journalists believed the government's sensitivity to criticism resulted in a higher degree of self-censorship.

Libel/Slander Laws: The law makes defamation a criminal offense, but there were no prosecutions for defamation during the year. The law also prohibits blasphemy, although reports indicated the last known prosecution for blasphemy was in 1968.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online

content, and there were no credible reports the government monitored private online communications without appropriate legal authority. The law authorizes state monitoring of telecommunication systems, however, including the internet and email, for national security reasons. The law requires all service providers to register on secure databases the identities, physical addresses, and telephone numbers of customers.

Academic Freedom and Cultural Events

There were no reports of government restrictions on academic freedom or cultural events.

b. Freedoms of Peaceful Assembly and Association

The constitution and law provide for freedom of assembly and association, and the government generally respected these rights. Nevertheless, NGOs reported many municipalities continued to require protest organizers to provide advance written notice before staging gatherings or demonstrations.

Freedom of Peaceful Assembly

In prior years protest organizers could be legally required to notify local authorities before staging gatherings or demonstrations. In 2018 the Constitutional Court ruled unanimously against this requirement. Legal experts noted the ruling did not address the question of assuring security by local authorities during protests.

Despite the court ruling, NGOs reported many municipalities continued to require protest organizers to provide advance written notice, especially in small rural communities where organizers were often unaware of their rights. The NGO Right2Protest reported the city of Johannesburg classified protests as “special events” like marathons and thus charged protest organizers fees to cover police security expenses. The NGO contended this practice violated the law on public gatherings.

Police on occasion used excessive force in response to demonstrations (see section 1.a.). In March police fired rubber bullets at students protesting at Wits University in Johannesburg. One bystander at close range was hit and killed. The

Independent Police Investigative Directorate was sent to the scene to investigate excessive use of force. Four police officers were being tried for the killing of the bystander, Mthokozisi Ntumba.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement and the Right to Leave the Country

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. In March 2020 the president declared a national disaster to restrict the spread of COVID-19. Even as levels were adjusted throughout the year, most interprovincial travel was allowed along with international travel.

e. Status and Treatment of Internally Displaced Persons

Not applicable.

f. Protection of Refugees

The government cooperated with UNHCR and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, or asylum seekers, as well as other persons of concern.

Access to Asylum: The law provides for the granting of asylum and refugee status, and the government has an established system for providing protection to refugees. Refugee advocacy groups criticized the government's processes for determining refugee status, citing low approval rates, large case and appeal backlogs, a lack of timely information provided to asylum seekers on their asylum requests and status of their cases, inadequate use of country-of-origin information, an inadequate number of processing locations, and official corruption. Despite DHA anticorruption programs that punished officials found to be accepting bribes, NGOs and asylum applicants reported immigration officials sought bribes. According to civil society groups, the system lacked procedural safeguards for

seeking protection and review for unaccompanied minors, trafficked victims, and victims of domestic violence. Government services strained to keep up with the caseload, and NGOs criticized the government's implementation of the system as inadequate. In March the government signed a four-year agreement with UNHCR to address the backlog of 153,000 refugee status determination cases.

The DHA closed its offices for the year due to the COVID-19 pandemic. Although the DHA issued a blanket extension on refugee and asylum certificates, these were often not recognized. The lack of documentation had far-ranging impacts including limiting refugee travel and accessing civil registry services. As of December the DHA had not opened the Cape Town refugee reception center, closed since 2012, following a High Court order in May that it be reopened.

Abuse of Migrants, Refugees, and Stateless Persons: Refugee advocacy organizations stated police and immigration officials physically abused refugees and asylum seekers (see also section 1.d., Arbitrary Arrest). Xenophobic violence was a continuing problem across the country, especially in Gauteng Province. Those targeted often owned or managed small, informal grocery stores in economically marginalized areas that lacked government services. Refugees, asylum seekers, and foreign-born shopkeepers alleged they were also targeted during the July riots.

Due to DHA office closures and the resulting inability to secure identification, an undocumented Somali man's body remained in a mortuary for two months before his community could bury him, contrary to Islamic tradition.

Employment: The law permits refugees to work lawfully. Asylum seekers must obtain DHA approval to work, which was generally granted. According to NGOs, refugees regularly were denied employment due to their immigration status.

Access to Basic Services: Although the law provides for asylum seekers, migrants, and refugees to have access to basic services, including education, health, social support, police, and judicial services, NGOs reported that health-care facilities and authorities discriminated against asylum seekers, migrants, and refugees. Some refugees reported they could not access schooling for their children because schools refused to accept asylum documents as proof of

residency. NGOs reported banks regularly denied services to refugees and asylum seekers if they lacked government-issued identification documents.

Durable Solutions: The government granted some refugees permanent residency and a pathway to citizenship, and, in collaboration with the International Organization for Migration and UNHCR, assisted others in returning voluntarily to their countries of origin.

Temporary Protection: The government offered temporary protection to some individuals who may not qualify as refugees. The government allowed persons who applied for asylum to stay in the country while their claims were adjudicated and, if denied, to appeal.

g. Stateless Persons

The law extends citizenship to children born to foreign national parents who arrived in the country on or after January 1, 1995.

In October the Constitutional Court ruled that unmarried fathers may register their children under their surname without the mother's consent. The landmark ruling is to avoid placing children at risk of statelessness if the mother is undocumented, missing, or deceased.

Section 3. Freedom to Participate in the Political Process

The law provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: In 2019 the country held National Assembly, National Council of Provinces, and provincial legislature elections. The ANC won 58 percent of the vote, the leading opposition Democratic Alliance (DA) Party 21 percent, and the EFF party 11 percent. According to the Electoral Institute for Sustainable Democracy in Africa, voter turnout was 66 percent, the lowest turnout for national elections since the end of apartheid. The institute stated the elections were transparent, fair, credible, and in line with the constitutional and legal framework

for elections.

The ruling ANC won 230 of 400 seats in the National Assembly, the dominant lower chamber of parliament. Election observers, including the African Union and the Southern African Development Community, characterized the elections as largely credible. The government, however, restricted diplomatic missions from assigning more than two election observers each, effectively excluding diplomatic missions from broad observation of the elections. The DA won 84 parliamentary seats, the EFF won 44 seats, the Inkatha Freedom Party (IFP) won 14 seats, and the Freedom Front Plus (FF+) won 10 seats. The remaining 27 seats were allocated to nine other political parties based on a proportional vote-count formula. In the National Council of Provinces, the upper house of parliament, the ANC won 29 seats, the DA 13 seats, the EFF nine seats, the FF+ two seats, and the IFP one seat. ANC leader Cyril Ramaphosa was sworn in for his first full term as president of the republic.

In the 2019 elections the ANC won control of eight of the nine provincial legislatures.

Political Parties and Political Participation: In an effort to promote transparency and accountability, President Ramaphosa signed in January a Proclamation on the Commencement of the Political Party Funding Act, which commenced April 1, regulating public and private funding of political parties. The Act establishes funds to provide political parties represented in parliament and legislatures with funding to undertake their work. It also requires that donations be disclosed by parties and donors to the Independent Electoral Commission (IEC). The Act prohibits donations to parties by foreign governments or agencies, foreign persons or entities, organs of state or state-owned enterprises. Parties may, however, receive funding from foreign entities for training, skills development or policy development. No member of a political party may receive a donation other than for political party purposes.

Opposition parties accused the South African Broadcasting Corporation (SABC), the state-owned public broadcaster, of favoring the ruling party in its news coverage and advertising policies. Prior to the municipal elections, smaller political parties criticized the SABC for not covering their events. SABC

regulations, however, dictate coverage should be proportional to the percentage of votes won in the previous election, and independent observers did not find the SABC violated this regulation.

Opposition parties claimed the ANC used state resources for political purposes in the provinces under its control. Prior to the 2019 national elections, the DA accused former ANC secretary general Ace Magashule of vote buying. In May the ANC sanctioned Magashule (see section 4, Corruption). ANC membership conferred advantages. Through a cadre deployment system, the ruling party controls and appoints party members to thousands of civil service positions in government ministries and in provincial and municipal governments.

Participation of Women and Members of Minority Groups: No law limits the participation of women or members of minority groups in the political process, and they did participate. Civil society reported that fewer women participated as candidates and as voters in municipal elections compared to national elections. Concerns regarding violence around municipal voting stations affected female voter turnout more than male voter turnout. A municipality in KwaZulu-Natal elected the country's first openly gay mayor, Chris Pappas. The IEC together with the South African National Council for the Blind developed a voting aid, the Universal Ballot Template, to assist persons with disabilities and special needs to have an independent and secret vote during elections.

Section 4. Corruption and Lack of Transparency in Government

The law provides for criminal penalties for conviction of official corruption, and the government generally did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year.

Corruption: Official corruption remained a problem. The ANC sought to remove party members implicated in corruption scandals due to concern the scandals undermined public confidence in the ANC-led government. Hermione Cronje, head of the National Prosecuting Authority's Investigating Directorate, resigned on December 3, allegedly for failing to prosecute sufficient official corruption cases.

Cronje was the first person to lead the Investigating Directorate, which was established by President Ramaphosa in 2019 “as an instrument in the fight against corruption.”

At least 10 agencies, including the SAPS Special Investigation Unit, Public Service Commission, Office of the Public Prosecutor, and Office of the Auditor General, were involved in anticorruption activities. During the year the Office of the Public Protector, which is constitutionally mandated to investigate government abuse and mismanagement, investigated thousands of cases, some of which involved high-level officials.

Officially called the Judicial Commission of Inquiry into Allegations of State Capture, the Zondo Commission was established in 2018 to tackle corruption allegations against individuals inside and outside government. Former president Jacob Zuma steadfastly refused to appear before the commission to answer to allegations made against him. Although he was granted medical parole and only served two of his 15 months in prison, the Constitutional Court did sanction Zuma for refusing to appear before the Zondo Commission and effectively sentenced him to prison.

In October the National Police Commissioner Khehla Sitole rejected calls for his suspension on corruption allegations. He was waiting for President Ramaphosa’s decision on his fitness to hold office. A year prior he had suspended his deputy national commissioner Bonang Mgwenya following allegations regarding her alleged involvement in crimes and fraudulent contracts. In December media broke the story that Deputy National Police Commissioner Sindile Mfazi may have been killed in July for his role in investigating COVID-19 personal protective equipment procurement.

In November 2020 authorities charged ANC secretary general Magashule with 21 charges of corruption, theft, fraud, and money laundering, and he was released on bail. Despite Magashule’s rejection of calls by the ANC Integrity Commission to step down, in May the ANC National Executive Committee suspended him.

Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses of Human

Rights

Domestic and international human rights groups generally operated without government restriction, investigating, and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.

Government Human Rights Bodies: Although created by the government, the constitution establishes several state institutions tasked with supporting constitutional democracy. The task of these institutions is to promote and protect those rights within the Bill of Rights and operate independently. Among these is the South African Human Rights Commission, which is responsible for promoting the observance of fundamental human rights at all levels of government and throughout the general population. The commission has the authority to conduct investigations, issue subpoenas, and take sworn testimony. Civil society groups considered the commission only moderately effective due to a large backlog of cases and the failure of government agencies to adhere to its recommendations. Between November and December, the commission held a National Investigative Hearing into the July Unrest in KwaZulu-Natal and Gauteng Provinces.

Section 6. Discrimination and Societal Abuses

Women

Rape and Domestic Violence: The law criminalizes domestic violence and rape of men or women, including spousal rape, but the government did not effectively enforce the law. The minimum sentence for conviction of rape is 10 years' imprisonment. Under certain circumstances, such as second or third offenses, multiple rapes, gang rapes, or the rape of a minor or a person with disabilities, conviction requires a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence. Perpetrators with previous rape convictions and perpetrators aware of being HIV positive at the time of the rape also face a minimum sentence of life imprisonment, unless substantial and compelling circumstances exist to justify a lesser sentence.

In most cases of rape and domestic violence, attackers were acquaintances or

family members of the survivor that, together with societal attitudes, contributed to a reluctance to press charges. NGOs stated that cases were underreported, especially in rural communities, due to stigma, unfair treatment, fear, intimidation, and lack of trust in the criminal justice system. SAPS reported a decrease in the number of reported rape cases from 42,289 in 2019/20 to 36,463 in 2020/21. According to first-quarter SAPS crime statistics, 10,006 persons were raped between April and June 2021. Police Minister Bheki Cele released crime statistics that 9,556 rape cases were reported between July and September. There were numerous reports of rapes by police officers of sex workers, lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) persons, incarcerated persons, and others (see also section 1.c.).

There were numerous reported sexual assaults such as the following example. In June 2020 a woman eight months pregnant was found dead hanging from a tree in Johannesburg. She and her fetus had multiple stab wounds. Muzikayise Malephane was arrested and charged with premeditated murder. In February he was sentenced to 20 years in prison for murder, five years for defeating the ends of justice, and five years for possession of an illegal firearm and ammunition.

According to the *National Prosecuting Authority 2019-2020 Annual Report*, the authority achieved its highest number of successfully prosecuted sexual offense cases ever during that time period. It prosecuted 5,451 sexual offense cases and had 4,098 convictions, a 75 percent conviction rate.

The Department of Justice operated 96 dedicated sexual offenses courts throughout the country. Although judges in rape cases generally followed statutory sentencing guidelines, women's advocacy groups criticized judges for using criteria, such as the victim's behavior or relationship to the rapist, as a basis for imposing lighter sentences.

The government provided funding for, and the National Prosecuting Authority operated 51 rape management centers, addressing the rights and needs of survivors and vulnerable persons, including legal assistance. A key objective of the centers was prosecution of sexual, domestic violence, and child-abuse offenders. Approximately 75 percent of the cases they took to trial resulted in convictions.

Domestic violence was pervasive and included physical, sexual, emotional, and verbal abuse, as well as harassment and stalking. During the pandemic, NGOs and the government documented an escalation of gender-based violence against women and girls. The government prosecuted domestic violence cases under laws governing rape, indecent assault, damage to property, and violating a protection order. The law requires police to protect victims from domestic violence, but police commanders did not always hold officers accountable. Conviction of violating a protection order is punishable by up to five years' imprisonment and up to 20 years' imprisonment if convicted of additional criminal charges. Penalties for conviction of domestic violence include fines and sentences of between two and five years' imprisonment.

During the year media documented a rise in teenage pregnancies particularly during the pandemic with the South African Medical Research Council attributing violence against women and girls as a contributor to these pregnancies along with difficulty faced by adolescents in obtaining contraceptives. In December the basic education minister published a new policy on prevention and management of teenage pregnancy. Under the policy, schools are mandated to report to SAPS cases of statutory rape, if a girl is younger than age 16 and the father of the unborn child is 16 or older.

The government financed shelters for abused women, but NGOs reported a shortage of such facilities, particularly in rural areas, and that women were sometimes turned away from shelters.

Female Genital Mutilation/Cutting (FGM/C): The law prohibits FGM/C of girls and women, but girls in isolated zones in ethnic Venda communities in Limpopo Province were subjected to the practice. The government continued initiatives to eradicate the practice, including national research and sensitization workshops in areas where FGM/C was prevalent.

Sexual Harassment: Although prohibited by law, sexual harassment remained a widespread problem. Sexual harassment is a criminal offense for which conviction includes fines and sentences of up to five years' imprisonment.

Enforcement against workplace harassment is initially left to employers to address

as part of internal disciplinary procedures. The Department of Employment and Labour (Department of Labour) issued guidelines to employers on how to handle workplace complaints that allow for remuneration of a victim's lost compensation plus interest, additional damages, legal fees, and dismissal of the perpetrator in some circumstances. NGOs and unions urged the government to ratify the International Labor Organization (ILO) convention on the prevention of violence and harassment in the workplace. Despite presidential support, parliament had yet to ratify the convention by year's end.

NGOs reported sexual harassment of women in the major political parties. Only two of the seven major parties had policies against sexual harassment.

Reproductive Rights: There were no reports of forced abortion on the part of government authorities; however, during the year there were reports of forced sterilizations submitted to the Commission for Gender Equality and civil society organizations.

Couples and individuals have the right to decide freely the number, spacing, and timing of their children. The full range of contraception methods were available at all primary health-care clinics for free. Emergency health care was available for the treatment of complications arising from unsafe abortion.

The government provided access to sexual and reproductive health services for survivors of sexual violence. The country has laws and policies to respond to gender-based violence and femicide, although authorities did not fully implement these policies and enforce relevant law. The law provides for survivors of gender-based violence to receive shelter and comprehensive care, including treatment of injuries, a forensic examination, pregnancy and HIV testing, provision of postexposure prophylaxis, and counseling rehabilitation services.

According to the *Saving Mothers Report 2017/2019*, there has been a progressive and sustained reduction in institutional maternal mortality in the past three triennia (2010-19), from 320 per 100,000 live births to 120 per 100,000 live births. The report further identified that a significant systemic driver contributing to mortality was the length of time it took for emergency service personnel to arrive at a facility where a skilled birth attendant can deal with an emergency. Furthermore, the

government developed a Framework and Guidelines for Maternal and Neonatal Care during a Crisis: COVID-19 response to strengthen Maternal, Perinatal, and Neonatal services for emergency preparedness and management.

Menstruation and access to menstruation hygiene affected girls' attendance at school. One NGO estimated 30 percent of girls did not attend school while they menstruated, due to lack of access to sanitary products. During the year observers noted substantial increases in teenage pregnancies, which also affected girls' attendance at school.

Discrimination: Discrimination against women remained a serious problem despite legal equality in family, labor, property, inheritance, nationality, divorce, and child custody matters. Women experienced economic discrimination in wages, extension of credit, and ownership of land.

Traditional patrilineal authorities, such as a chief or a council of elders, administered many rural areas. Some traditional authorities refused to grant land tenure to women, a precondition for access to housing subsidies. Women could challenge traditional land tenure discrimination in courts, but access to legal counsel was costly.

By law any difference in the terms or conditions of employment among employees of the same employer performing the same, substantially similar, or equal value work constitutes discrimination. The law expressly prohibits unequal pay for work of equal value and discriminatory practices, including separate pension funds for different groups in a company (see section 7.d.).

Systemic Racial or Ethnic Violence or Discrimination

There were numerous reports of racial discrimination, despite the prohibition under the constitution of unfair discrimination against anyone on one or more grounds, including on the ground of race. The South African Human Rights Commission stated in June that gross inequality was fueling racism and racial polarization. The Department of Human Settlements acknowledged inequality along racial lines had affected and continued to affect the country's segregated spatial development as well as poor communities' access to reliable infrastructure. Approximately 300 Equality Courts mandated by the Promotion of Equality and Prevention of Unfair

Discrimination Act resolved only 600 matters a year.

Some advocacy groups asserted white farmers were racially targeted for burglaries, home invasions, and killings, while many observers attributed the incidents to the country's high and growing crime rate. According to the Institute for Security Studies, "farm attacks and farm murders have increased in recent years in line with the general upward trend in the country's serious and violent crimes."

Local community or political leaders who sought to gain prominence in their communities allegedly instigated some attacks on African migrants and ethnic minorities (see section 2.f., Abuse of Migrants, Refugees, and Stateless Persons). The government sometimes responded quickly and decisively to xenophobic incidents, sending police and soldiers into affected communities to quell violence and restore order, but responses were sporadic and often slow and inadequate. Civil society organizations criticized the government for failing to address the causes of violence, for not facilitating opportunities for conflict resolution in affected communities, for failing to protect the property or livelihoods of foreign nationals, and for failing to deter such attacks by vigorous investigation and prosecution of perpetrators.

Indigenous Peoples

The NGO Working Group of Indigenous Minorities in Southern Africa estimated there were 7,500 indigenous San and Khoi in the country, some of whom worked as farmers or farm laborers. By law the San and Khoi have the same political and economic rights as other citizens, although the government did not always effectively protect those rights or deliver basic services to indigenous communities. Indigenous groups complained of exclusion from land restitution, housing, and affirmative action programs. They also demanded formal recognition as "first peoples" in the constitution. Their lack of recognition as first peoples excluded them from inclusion in government-recognized structures for traditional leaders. Their participation in government and the economy was limited due to fewer opportunities, lack of land and other resources, minimal access to education, and relative isolation.

Children

Birth Registration: The law provides for citizenship by birth (if at least one parent is a permanent resident or citizen), descent, and naturalization. Registration of births was inconsistent, especially in remote rural areas and by parents who were unregistered foreign nationals. Children without birth registration had no access to government services such as education or health care, and their parents had no access to financial grants for their children. Organizations such as Lawyers for Human Rights continued to draw attention to the problem of statelessness among children born in the country to both citizens and foreign nationals.

Education: Public education is compulsory and universal until age 15 or grade nine. Public education is fee based and not fully subsidized by the government. Nevertheless, the law provides that schools may not refuse admission to children due to a lack of funds; therefore, disadvantaged children, who were mainly black, were eligible for financial assistance. Even when children qualified for fee exemptions, low-income parents had difficulty paying for uniforms and supplies. In violation of law, noncitizen children were sometimes denied access to education based on their inability to produce identification documents, such as birth certificates and immunization documents.

Child Abuse: The law criminalizes child abuse. Violence against children, including domestic violence and sexual abuse, remained widespread. Civil society and academics documented evidence that experiencing child maltreatment and witnessing partner abuse in the home as a child increased the risk of becoming both a perpetrator and victim of sexual and intimate partner violence as an adult, contributing to intergenerational abuse and violence.

There were reports of abuse of students by teachers and other school staff, including reports of assault and rape. The law requires schools to disclose sexual abuse to authorities, but administrators sometimes concealed sexual violence or delayed taking disciplinary action.

Child, Early, and Forced Marriage: By law parental or judicial consent to marry is required for individuals younger than 18. Nevertheless, *ukuthwala*, the practice of abducting girls as young as 14 and forcing them into marriage, occurred in

remote villages in Western Cape, Eastern Cape, and KwaZulu-Natal Provinces. The law prohibits nonconsensual ukuthwala and classifies it as a trafficking offense, and the National Prosecuting Authority prosecuted multiple cases of forced marriage.

Sexual Exploitation of Children: The law prohibits commercial sexual exploitation, sale, and offering or procurement of children for commercial sex and child pornography. The Film and Publications Board maintained a website and a toll-free hotline for the public to report incidents of child pornography. Online sexual exploitation of children continued in the country, potentially made worse by the pandemic and lockdown. Government authorities from the Department of Social Development and SAPS conducted educational outreach programs on the dangers of online recruitment and grooming. Media, government, and civil society reported that children were made more vulnerable to trafficking, particularly girls to sexual exploitation and trafficking, because of the pandemic's economic impacts. The minimum age for consensual sex is 16.

International Child Abductions: The country is a party to the 1980 Hague Convention on Civil Aspects of International Child Abduction. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/travel/en/International-Parental-Child-Abduction/providers/legal-reports-and-data/reported-cases.html

Anti-Semitism

According to a 2020 study published by the Isaac and Jessie Kaplan Centre for Jewish Studies at the University of Cape Town and the UK-based Institute for Jewish Policy Research, the country's Jewish population stood at 52,300, with the majority living in Cape Town and Johannesburg. The South African Jewish Board of Deputies recorded 65 anti-Semitic incidents, consistent with the 69 incidents reported in 2020; however, the bulk of the incidents occurred in May during the conflict between Israel and Hamas. There were reports of verbal abuse and hate speech, especially in social media and radio talk shows, and attacks on Jewish persons or property.

Trafficking in Persons

See the Department of State's Trafficking in Persons Report at <https://www.state.gov/trafficking-in-persons-report/>.

Persons with Disabilities

Persons with disabilities could access education, health services, public buildings, and transportation on an equal basis with others. The government provided government information and communication in accessible formats.

The law prohibits discrimination based on physical, sensory, intellectual, and mental disability in employment or access to health care, the judicial system, and education. The law, however, prohibits persons identified by the courts as having a mental disability from voting. The Department of Transportation policies on providing services to persons with disabilities were consistent with the constitution's prohibition on discrimination. The Department of Labour ran vocational centers at which persons with disabilities learned income-generating skills. Nevertheless, government and private-sector employment discrimination existed. The law mandates access to buildings for persons with disabilities, but such regulations were rarely enforced, and public awareness of them remained minimal.

The law prohibits harassment of persons with disabilities and, in conjunction with the Employment Equity Act, provides guidelines on the recruitment and selection of persons with disabilities, reasonable accommodation for persons with disabilities, and guidelines on proper handling of employees' medical information. Enforcement of this law was limited.

The *2020-2021 Annual Report of the Department of Basic Education* stated there were numerous barriers to education for students with disabilities, primarily a policy of channeling students into specialized schools at the expense of inclusive education. The department's report noted progress toward a more inclusive basic education and cited expansion of "special schools" and increased enrollment of students with disabilities in both special and public schools. Separate schools frequently charged additional fees (making them financially inaccessible), were

located long distances from students' homes, and lacked the capacity to accommodate demand. Human Rights Watch reported that children with disabilities were often denied tuition waivers or tuition reductions provided to other children. Children often were held in dormitories with few adults, many of whom had little or no training in caring for children with disabilities. When parents attempted to force mainstream schools to accept their children with disabilities – an option provided for by law – schools sometimes rejected the students outright because of their disabilities or claimed there was no room for them. Many blind and deaf children in mainstream schools received only basic care rather than education. Youth with disabilities in school faced problems of access (for example assistive equipment and technology; availability of learning materials in braille) and discriminatory attitudes that prevent their full and effective participation.

According to the *Optimus Study on Child Abuse, Violence and Neglect in South Africa*, children with disabilities were 78 percent more likely than children without disabilities to have experienced sexual abuse in the home. Persons with disabilities were sometimes subject to abuse and attacks, and prisoners with mental disabilities often received no psychiatric care.

HIV and AIDS Social Stigma

HIV and HIV-related social stigma and discrimination in employment, housing, and access to education and health care remained a problem, especially in rural communities.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity

Despite government policies prohibiting discrimination, there were reports of official mistreatment or discrimination based on sexual orientation or gender identity. For example, there were reports of security force members raping LGBTQI+ individuals during arrest. A 2018 University of Cape Town report underscored violence and discrimination, particularly against lesbians and transgender individuals. The report documented cases of “secondary victimization” of lesbians, including cases in which police harassed, ridiculed, and

assaulted victims of sexual and gender-based violence who reported abuse. LGBTQI+ individuals were particularly vulnerable to violent crime due to anti-LGBTQI+ attitudes within the community and among police. Anti-LGBTQI+ attitudes of junior members of SAPS affected how they handled complaints by LGBTQI+ individuals. According to Mamba Online, a gay news and lifestyle website, more than 22 LGBTQI+ persons were killed since February. One NGO in Durban claimed most hate crime victims did not report their cases to police due to secondary victimization; several activists accused religious leaders of not condemning hate crimes and killings against the LGBTQI+ community.

The constitution prohibits discrimination based on sexual orientation. The law prohibits discrimination against LGBTQI+ persons in housing, employment, nationality laws, and access to government services such as health care. In 2019 the High Court of Gauteng ruled that the Dutch Methodist Church's ban on solemnizing same-sex marriages was unconstitutional.

Other Societal Violence or Discrimination

There were reports persons accused of witchcraft were attacked, driven from their villages, and in some cases killed, particularly in Limpopo, Mpumalanga, KwaZulu-Natal, and Eastern Cape Provinces. Victims were often elderly women. Traditional leaders generally cooperated with authorities and reported threats against persons suspected of witchcraft.

Persons with albinism faced discrimination and were sometimes attacked in connection with ritual practices.

In October, three men were found guilty of the 2018 murder of Gabisile Shabane, age 13, who lived with albinism. They were given life sentences.

Ritual (*muthi*) killings to obtain body parts believed by some to enhance traditional medicine persisted. Police estimated organ harvesting for traditional medicine resulted in 50 killings per year.

NGOs reported intimidation and violent attacks on rural land rights activists. In October 2020 environmental activist Fikile Ntshangase was killed in her home. As a prominent member of the Mfolozi Community Environmental Justice

Organization, she had been involved in legal proceedings protesting expansion in KwaZulu-Natal Province of one of the country's largest open coal mines. No arrests were made. Another member of her community critical of the coal mine survived a drive-by shooting of his home in 2020. The South African Human Rights Commission called on the government to create a safe environment for activists to exercise their rights, including acting on threats against activists. Allegedly, two additional antimining activists, Tolakele Mthethwa and Sabelo Dladla, survived attacks in April.

Discrimination against members of religious groups occurred. In 2019 a female SANDF member Major Fatima Isaacs was ordered to remove her religious headscarf from beneath her military beret. She refused the order. In January 2020 SANDF dropped charges against Isaacs of willful defiance and disobeying a lawful command. The military during the year amended its dress policy to allow Muslim women to wear headscarves as part of their uniform

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law allows all workers, except for members of the National Intelligence Agency and the Secret Service, to form and join independent unions of their choice without previous authorization or excessive requirements. The law allows unions to conduct their activities without interference and provides for the right to strike, but it prohibits workers in essential services from striking, and employers are prohibited from locking out essential service providers. The government characterizes essential services as a service, the interruption of which endangers the life, personal safety, or health of the whole or part of the population; parliamentary service; and police services.

The law allows workers to strike due to matters of mutual interest, such as wages, benefits, organizational rights disputes, socioeconomic interests of workers, and similar measures. Workers may not strike because of disputes where other legal recourse exists, such as through arbitration. Labor rights NGOs operated freely.

The law protects collective bargaining and prohibits employers from

discriminating against employees or applicants based on past, present, or potential union membership or participation in lawful union activities. The law provides for automatic reinstatement of workers dismissed unfairly for conducting union activities. The law provides a code of good practices for dismissals that includes procedures for determining the “substantive fairness” and “procedural fairness” of dismissal. The law includes all groups of workers, including illegal and legally resident foreign workers.

The government respected freedom of association and the right to collective bargaining. Labor courts and labor appeals courts effectively enforced the right to freedom of association and the right to collective bargaining, and penalties were commensurate with penalties for comparable violations of the law.

Worker organizations were independent of the government and political parties, although the Congress of South African Trade Unions (COSATU), the country’s largest labor federation, is a member of a tripartite alliance with the governing ANC Party and the South African Communist Party. Due to the unique and often contentious relationship COSATU has with the ANC, COSATU union affiliates openly discussed whether COSATU should break its alliance with the ANC regarding concerns that the ANC has done little to advance workers’ rights and wages. During the year cash-flow problems, mounting debt, and unpaid salaries caused tensions between the ANC and their workers, exposing the depth of the financial woes the party was experiencing. ANC staff officials embarked on strikes and protests beginning in July protesting against late payment of wages and the party’s alleged failure to pay employee benefits. COSATU publicly sharply criticized the ANC for their failure to pay wages, and COSATU threw its weight behind the protesting workers.

The minister of labour has the authority to extend agreements by majority employers (one or more registered employers’ organizations that represent 50 percent plus one of workers in a sector) and labor representatives in sector-specific bargaining councils to the entire sector, even if companies or employees in the sector were not represented at negotiations. Companies not party to bargaining disputed this provision in court. Employers often filed for and received Department of Labour exemptions from collective bargaining agreements.

If not resolved through collective bargaining, independent mediation, or conciliation, disputes between workers in essential services and their employers were referred to arbitration or the labor courts.

Workers frequently exercised their right to strike. Trade unions generally followed the legal process of declaring a dispute (notifying employers) before initiating a strike. The 2020/21 striking season was heavily affected by the COVID-19 pandemic and saw unions and business working together to salvage both jobs and industries.

b. Prohibition of Forced or Compulsory Labor

The law prohibits forced labor. The penalties were not commensurate with those for comparable crimes. Inspectors typically levied fines and required payment of back wages in lieu of meeting evidentiary standards of criminal prosecution.

The government did not always effectively enforce the law. Boys, particularly migrant boys, were forced to work in street vending, food services, begging, criminal activities, and agriculture (see section 7.c.). Women from Asia and neighboring African countries were recruited for legitimate work, but some were subjected to domestic servitude or forced labor in the service sector. There were also reports by NGOs of forced labor in the agricultural, mining, and fishing sectors.

Also see the *Department of State's Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits employment of children younger than 15. The law allows children younger than 15 to work in the performing arts if their employers receive permission from the Department of Labor and agree to follow specific guidelines. The law also prohibits children between ages 15 and 18 from work that threatens their wellbeing, education, physical or mental health, or spiritual, moral, or social development. Children may not work more than eight hours a day or before 6 a.m. or after 6 p.m. A child not enrolled in school may not work more than 40 hours in any week, and a child attending school may not work more than 20 hours in any

week.

The law prohibits children from performing hazardous duties, including lifting heavy weights, meat or seafood processing, underground mining, deep-sea fishing, commercial diving, electrical work, working with hazardous chemicals or explosives, in manufacturing, rock and stone crushing, and work in gambling and alcohol-serving establishments. The Regulations on Hazardous Work by Children allow child workers not expected at school the following day to work between 6 p.m. and 11 p.m. in certain businesses or in babysitting. Employers may not require a child to work in a confined space or to perform piecework and task work. Penalties for violating child labor laws were commensurate with those for comparable crimes.

The government enforced child labor law in the formal sector of the economy that strong and well organized unions monitored, but enforcement in the informal and agricultural sectors was inconsistent.

According to the department, the government made progress in eradicating the worst forms of child labor by raising awareness, instituting strict legal measures, and increasing penalties for suspected labor violators. Nevertheless, it added that more efforts to address problems of child labor in migrant communities were needed.

Children were found working as domestic laborers, street workers, and scavenging garbage for food items and recyclable items. Children engaged in the worst forms of child labor, including commercial exploitation, sometimes as a result of human trafficking, illicit activities, including gang-related activity, and use in the production of pornography. According to the ILO, approximately 40-50 percent of the estimated 1.39 million persons forced into commercial sexual exploitation in the country were children. Boys, particularly migrant boys, were forced to work in street vending, food services, begging, criminal activities, and agriculture.

Although the government did not compile comprehensive data on child labor, NGOs and labor inspectors considered its occurrence rare in the formal sectors of the economy but believed there might instances in the informal economy of child labor that were underreported due to lack of dedicated resources. Civil society and government acknowledged that the COVID-19 pandemic's economic impact made

children more vulnerable to exploitation, in particular to sex trafficking.

See also the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings/>.

d. Discrimination with Respect to Employment and Occupation

The Employment Equity Act protects all workers against unfair discrimination based on race, age, gender, religion, marital status, pregnancy, family responsibility, ethnic or social origin, color, sexual orientation, disability, conscience, belief, political opinion, culture, language, HIV status, birth, or any other arbitrary ground. The legal standard used to judge discrimination in all cases is whether the terms and conditions of employment among employees of the same employer performing the same or substantially similar work, or work of equal value, differ directly or indirectly based on any of the grounds listed above. Employees have the burden of proving such discrimination. Penalties were commensurate with those for comparable crimes. The government has a regulated code of conduct to assist employers, workers, and unions to develop and implement comprehensive, gender-sensitive, and HIV- and AIDS-compliant workplace policies and programs.

The government did not consistently enforce the law. Discrimination in employment and occupation occurred with respect to race, gender, disability, sexual orientation, HIV status, and country of origin (see section 6).

Discrimination cases were frequently taken to court or the Commission for Conciliation, Arbitration, and Mediation.

In its 2020-21 annual report, the Commission for Employment Equity cited data on discrimination by ethnicity, gender, age, and disability in all sectors of the economy. The report argued that White and Indian females continued to bear the brunt of discrimination, while the White and Indian population groups dominated top and senior management positions. The implementation of the Black Economic Empowerment Act, which aims to promote economic transformation and enhance participation of Blacks in the economy, continued. The public sector better reflected the country's ethnic and gender demographics. Bias against foreign nationals was common in society and the workplace.

e. Acceptable Conditions of Work

Wage and Hour Laws: In 2019 the country's first national minimum wage came into effect, replacing a patchwork of sectoral minimum wages set by the Department of Labour. The minimum wage was above the official poverty line. The employment and labour minister announced an increase to 21,69 rand (\$1.47) per hour for the year that went into effect on March 1. The law protects migrant workers, and they are entitled to all benefits and equal pay. The minimum wage law also established a commission to make annual recommendations to parliament for increases in the minimum wage.

The law establishes a 45-hour workweek, standardizes time-and-a-half pay for overtime, and authorizes four months of maternity leave for women. No employer may require or permit an employee to work overtime except by agreement, and employees may not work be more than 10 overtime hours a week. The law stipulates rest periods of 12 consecutive hours daily and 36 hours weekly and must include Sunday. The law allows adjustments to rest periods by mutual agreement. A ministerial determination exempted businesses employing fewer than 10 persons from certain provisions of the law concerning overtime and leave. Farmers and other employers could apply for variances from the law by showing good cause. The law applies to all workers, including workers in informal sectors, foreign nationals, and migrant workers, but the government did not prioritize labor protections for workers in the informal economy.

Occupational Safety and Health: The government set appropriate occupational health and safety (OSH) standards through the Department of Mineral Resources and Energy for the mining industry and through the Department of Labour for all other industries.

There are harsh penalties for violations of OSH laws in the mining sector. Employers are subject to heavy fines or imprisonment if convicted of responsibility for serious injury, illness, or the death of employees due to unsafe mine conditions. The law allows mine inspectors to enter any mine at any time to interview employees and audit records. The law provides for the right of mine employees to remove themselves from work deemed dangerous to health or safety. The law prohibits discrimination against a mining employee who asserts a right granted by

law and requires mine owners to file annual reports providing OSH statistics for each mine, including safety incidents. Conviction of violating the mining health and safety law is punishable by two years' imprisonment, and the law empowers the courts to determine a fine or other penalty for perjury. The Department of Mineral Resources and Energy is responsible for enforcing OSH law.

Outside the mining industry, no law or regulation permits workers to remove themselves from work situations deemed dangerous to their health or safety without risking loss of employment, although the law provides that employers may not retaliate against employees who disclose dangerous workplace conditions. Employees were also able to report unsafe conditions to the Department of Labour that used employee complaints as a basis for prioritizing labor inspections. Penalties were commensurate with those for comparable offenses. The Department of Labour is responsible for enforcing safety laws outside the mining sector.

The Department of Labour is responsible for enforcing wage standards outside the mining sector, and a tripartite Mine Health and Safety Council and an Inspectorate of Mine Health and Safety enforced such standards in the mining sector. Penalties for violations of wages and workhour laws outside the mining sector were commensurate with those for comparable offenses.

The Department of Labour employed an insufficient number of labor inspectors to enforce compliance. Labor inspectors conducted routine and unannounced inspections at various workplaces that employed vulnerable workers. Labor inspectors investigated workplaces in both the formal and informal sectors. Labor inspectors and unions reported having difficulty visiting workers on private farms.

The government did not effectively enforce the law in all sectors. OSH regulations were frequently violated in the mining sector, and compensation for injuries was erratic and slow. Penalties were commensurate with those for comparable offenses, however, not sufficient to deter violations. Unions in the agriculture sector noted their repeated attempts to have the Department of Labour fine farm owners who failed to shield workers from hazardous chemicals sprayed on crops. Although labor conditions improved on large commercial farms, COSATU and leading agricultural NGOs reported labor conditions on small farms remained

harsh. Underpayment of wages and poor living conditions for workers, most of whom were Black noncitizens, were common. Many owners of small farms did not measure working hours accurately, 12-hour workdays were common during harvest time, and few farmers provided overtime benefits. Amendments to the Basic Conditions of Employment Act attempted to address some labor abuses at farms. For example, changes prohibited farms from selling goods from farm-operated stores to farm employees on credit at inflated prices. During the COVID-19 pandemic, many employers cut salaries, without following the law restricting an employer's ability to change an employee's pay; this was especially evident with domestic workers. Most domestic workers were either subject to staying with their employers or risk losing both their income and employment.

Farm workers also reported health and sanitation concerns.

Mining accidents were common. Mine safety has steadily improved from prior decades, however. For example, 553 miners lost their lives in 1995 compared with only 60 deaths in 2020 and 51 deaths in 2019. Mining operations were scaled down significantly for much of 2020 and during the year due to the COVID-19 pandemic, particularly deep-level mining. According to the Department of Mineral Resources and Energy, as of December 13, there were 72 reported fatalities among workers in the mining industry.

In July 2019 the Constitutional Court ruled employees assigned to workplaces via a labor broker ("temporary employment service") are employees of the client and entitled to wages and benefits equal to those of regular employees of the client.

Informal Sector: Economic researchers reported that approximately 30 percent of total employment was informal, with higher rates in rural areas. The informal sector included traders such as street vendors and market sellers, domestic workers, waste pickers, and agricultural workers. The *Government Gazette* confirmed that domestic workers are covered for injury or death under workers compensation laws and minimum wage laws. This action followed a landmark ruling by the Constitutional Court upholding the 2019 High Court of Gauteng decision expanding statutory workers' compensation coverage to domestic workers.